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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
DIVISION OF PORTLAND

COLLEGENET, INC.,

PLAINTIFF,

v.

WORD ENTERTAINMENT LLC; 25 LIVE,
LLC; and THE BREEN AGENCY, INC.,

DEFENDANTS.

Case No. **GV'11 - 639 AC**

COLLEGENET, INC.'S
COMPLAINT FOR SERVICE
MARK INFRINGEMENT, FALSE
DESIGNATION OF ORIGIN, AND
UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

In support of its Complaint, Plaintiff CollegeNET, Inc. alleges the following:

THE PARTIES, JURISDICTION, AND VENUE

1. Plaintiff CollegeNET, Inc. (hereinafter "CollegeNET" or "Plaintiff") is a Delaware corporation having its principal place of business in Portland, Oregon.
2. Defendant Word Entertainment LLC (hereinafter "Word Entertainment" or "Defendant") is a Tennessee limited liability company having its principal place of business at 25 Music Square West, Nashville, Tennessee.

3. Defendant 25 Live, LLC, is a Tennessee limited liability company, formerly known as Breen Artists Agency, LLC, having its principal place of business at 25 Music Square West, Nashville, Tennessee.

4. Defendant The Breen Agency, Inc., is a Tennessee corporation having its principal place of business at 25 Music Square West, Nashville, Tennessee.

5. This action arises, *inter alia*, under the Trademark Laws of the United States, 15 U.S.C. § 1051, *et seq.*, and the common law. This Court has jurisdiction under the provisions of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, 1367.

6. Defendants have committed acts giving rise to the causes of action set forth herein within the District of Oregon, and are subject to personal jurisdiction in the District of Oregon.

7. The District of Oregon is a proper venue for this action pursuant to 28 U.S.C. § 1391.

GENERAL ALLEGATIONS

8. CollegeNET is in the business of providing, *inter alia*, web-based computer database, information, and application software and services, including scheduling, booking, publishing and management technology for facilities and events. CollegeNET provides such online event and facilities scheduling, booking, publishing, and management software and services to hundreds of institutions in Oregon, across the United States, and abroad, including public, private, religious and secular educational institutions, as well as to other non-profit and for-profit organizations and entities.

9. Since at least as early as July 28, 2008, CollegeNET has been continuously engaged in the business of marketing and providing such online software, services, and related technology in commerce under the mark **25LIVE®**. During that time, CollegeNET has expended a significant amount of resources in developing goodwill and brand recognition in and for the **25LIVE®** mark.

10. CollegeNET uses the mark **25LIVE®** in connection with, *inter alia*, remotely-accessible technology through which users can remotely check venue availability, book facilities

and events, process registrations, publish and promote upcoming events through web calendars and other online displays, manage ticketing and merchandise, and monitor inventory.

11. A wide variety of institutions use CollegeNET's **25LIVE**[®] technology, including institutions that are affiliated with religious organizations, such as Duke University and Chapman University, and have used CollegeNET's **25LIVE**[®] technology to book religious services and events, such as Johnson C. Smith University. Others, such as The Juilliard School and Samford University School for the Arts, regularly use **25LIVE**[®] technology to book and promote musical performances and other special events.

12. CollegeNET's rights in the **25LIVE**[®] mark are a matter of public record. CollegeNET owns U.S. Service Mark Registration No. 3,778,527 in International Class 35, applied for on August 1, 2007, and registered on April 20, 2010, for use of the **25LIVE**[®] mark in connection with "[p]roviding on-line databases for businesses and educational institutions used to access, plan for and manage facility and campus capacity, scheduling, space and resources; providing on-line databases for collecting, storing, organizing and sharing of data and information for use by educational institutions." Exhibit A.

13. CollegeNET also owns U.S. Service Mark Registration No. 3,544,489 in International Class 38, applied for on August 1, 2007, and registered on December 9, 2008, for use of the **25LIVE**[®] mark in connection with "providing access to data or documents stored electronically in central files for remote consultation relating to managing facility and campus capacity, scheduling space and resources." Exhibit B.

14. CollegeNET also owns U.S. Service Mark Registration No. 3,699,487 in International Class 41, applied for on August 1, 2007, and registered on October 20, 2009, for use of the **25LIVE**[®] mark in connection with "[p]roviding an interactive computer database featuring information regarding courses, educational programs, alumni, academics, facilities, student activities, sports, extracurricular activities in the field of colleges universities and other educational facilities." Exhibit C.

15. CollegeNET also owns U.S. Service Mark Registration No. 3,627,725 in International Class 42, applied for on August 1, 2007, and registered on May 26, 2009, for use of the **25LIVE®** mark in connection with "[c]omputer programming for others; Computer services, namely, provision of access to data or documents stored electronically in central files for remote consultation relating to an interactive computer database through the use of on-line non-downloadable software tools used to assess, plan for and manage facility and campus capacity, scheduling, space and resources; provision of access to data or documents stored electronically in central files for remote consultation through the use of online non-downloadable software tools for on-line activities, namely, tools used to assess, plan for and manage facility and campus capacity, scheduling, space and resources; computer services, namely, provision of access to data or documents stored electronically in central files for remote consultation relating to the field of knowledge management through the use of hosted computer application software for searching and retrieving information from databases and computer networks; provision of access to data or documents stored electronically in central files for remote consultation relating to authentication, access control, monitoring and protection of contents of electronic files via computer and communication networks through the use of on-line non-downloadable software." Exhibit D.

16. The registrations identified in Paragraphs 12-15 above (the "**25LIVE®** Registrations") are valid and subsisting, have not been canceled, and constitute *prima facie* evidence of the validity of the **25LIVE®** mark, of the registrations of said mark, of CollegeNET's ownership of said mark, and of CollegeNET's exclusive right to use the mark in commerce.

17. As a result of CollegeNET's continuous and exclusive use of the **25LIVE®** mark since at least July 2008 and the commercial success of the technology marketed and sold under the **25LIVE®** mark, CollegeNET has developed significant brand recognition and goodwill in the **25LIVE®** mark so as to render the mark a well-known symbol of CollegeNET, its goods and its services.

18. CollegeNET's **25LIVE®** mark has come to represent the valuable goodwill and reputation of CollegeNET in the market for event and facilities management, booking, and

scheduling software, services, and related technology. As a result, the consuming public has come to expect that goods and services marketed and sold under CollegeNET's 25LIVE® mark are associated with CollegeNET.

19. Defendant Word Entertainment describes itself as "a comprehensive entertainment company comprised of multi-faceted artist service departments including publishing, merchandising, booking, and online initiatives."

20. On information and belief, in or about August 2009, Word Entertainment acquired The Breen Agency, Inc. ("The Breen Agency") and/or Breen Artists Agency, LLC. In or about late 2010, the name of Breen Artists Agency, LLC was officially changed to 25 Live, LLC ("25 Live") and it began doing business under the "25 LIVE" name and mark, and variations thereof.

21. 25 Live and/or The Breen Agency provide event-booking services, including booking of performances featuring musicians, speakers, worship leaders, and comedians. 25 Live and/or The Breen Agency operate an interactive website, available within the District of Oregon at www.25live.com, which advertises and promotes such event-booking services (the "25 LIVE Website"). The 25 LIVE mark is prominently displayed on every page of the 25 LIVE Website.

22. The 25 LIVE Website offers an interactive online interface through which users can initiate the booking of an event by, *inter alia*, providing information related to location, capacity, and other characteristics of the venue or facility to be booked, duration of the event, ticket type, and ticket prices.

23. On information and belief, 25 Live and/or The Breen Agency have provided event-booking services to a variety of users, venues, and facilities, including institutions of higher education that are also customers of CollegeNET, such as Duke University, Middle Tennessee State University, Northwest Christian University, Halifax Community College, University of Memphis, Friends University, Pepperdine University, Southern Adventist University, and University of Georgia.

24. On information and belief, 25 Live and/or The Breen Agency have also provided event-booking services to many other educational institutions, including Southern Nazarene University, Bethel University, University of Kentucky, Asbury University, Vincennes University, Warner University, LeTourneau University, Anderson University, Judson University, Cornerstone University, Shorter University, University of Mary Hardin-Baylor, Mississippi University for Women, Grand Canyon University, Trinity Lutheran Church & School, Dordt College, Denfeld High School, Columbia International University, Brunswick Community College, Liberty University, Arkansas State University, John Brown University, and Trevecca Nazarene University.

25. On information and belief, 25 Live and/or The Breen Agency have booked events in and provided booking services to residents within the District of Oregon under the 25 LIVE mark, including the booking of a multimedia presentation entitled "Journey to Jamaa" which took place in Portland, Oregon, on May 22, 2011, a performance by musician Chris August scheduled to take place in Portland, Oregon, on October 11, 2011, and performances by musician Jadon Lavik scheduled to take place in Wilsonville, Oregon, on July 20, 23-24 and December 18, 2011.

26. On information and belief, 25 Live and/or The Breen Agency have also booked other events in and provided booking services to residents within the District of Oregon, including an event featuring the musical group Point of Grace at Trinity Lutheran Church & School in Bend, Oregon, an event featuring the musician Bebo Norman at Northwest Christian University in Eugene, Oregon, and an event featuring the musician Natalie Grant at the Rose Garden in Portland, Oregon.

27. One or more Defendants operate a Twitter account using the name "25LIVE", available in the District of Oregon at www.twitter.com/25live, to promote their event booking services. One of the listed "followers" of the 25LIVE Twitter account, i.e., one of those who regularly receive messages sent from the 25LIVE Twitter account, is "OACPromotions," which describes him or itself as "Oregon's Premier Event Music & Entertainment specialist."

28. In an article posted on the allaccess.com website on January 3, 2011, David Breen, founder of 25 Live and The Breen Agency, and current Vice President of 25 Live, was quoted as stating that Defendants have "many plans in place to expand" the breadth and nature of their services, and that Defendants adopted the 25 LIVE mark "to convey our advancement into more than just a booking agency but a live events company." Exhibit E.

29. On January 18, 2011, CollegeNET's counsel sent correspondence to Mr. Breen identifying CollegeNET's rights in the **25LIVE®** mark, providing CollegeNET's address in Portland, Oregon, and objecting to Defendants' use of the 25 LIVE mark. Counsel for Word Entertainment provided an initial response to this correspondence on February 4, 2011, and a further response on February 15, 2011. CollegeNET has received no response from any party claiming to represent The Breen Agency or 25 Live apart from Word Entertainment.

30. Word Entertainment also uses the 25 LIVE mark to promote itself as an entity and the services of 25 Live and/or The Breen Agency. For example, Word Entertainment uses the 25 LIVE mark on websites it makes available throughout the District of Oregon at www.wordentertainment.com and www.wordlabelgroup.com. Word Entertainment and its CEO/President Rod Riley have also used the 25 LIVE mark in press releases and other statements to the press distributed throughout the District of Oregon and elsewhere. Such press releases and public statements to the press have indicated that services provided under the 25 LIVE mark are controlled by or originate from Word Entertainment, in addition to The Breen Agency and/or 25 Live.

31. By virtue of the **25LIVE®** Registrations, Defendants had constructive notice of CollegeNET's rights in the **25LIVE®** mark at least as early as December 9, 2008.

32. By virtue of Plaintiff's correspondence with Mr. Breen and counsel for Word Entertainment, Defendants had actual notice of CollegeNET's use and registration of the **25LIVE®** mark and location within the District of Oregon at least as early as February 4, 2011.

33. Defendants have continued to use the 25 LIVE mark, including on websites and in press releases, after obtaining actual knowledge of CollegeNET's rights in the **25LIVE®** mark and of CollegeNET's location in Portland, Oregon.

34. On information and belief, CollegeNET's event-booking software, services, and related technology provided under the **25LIVE®** mark are marketed to and used by the same type of institutions and individuals that utilize the event-booking services provided and/or marketed by Defendants under the 25 LIVE mark.

35. CollegeNET provides an online interface in connection with the **25LIVE®** mark that users can use to book events, including musical events, speaking events, and other performances and special events, by inputting relevant data about the event and the venue or facility in which it is to take place. Defendants promote and/or provide an online interface in connection with the 25 LIVE mark and **25live.com** domain name that users can use to book events, including musical events, speaking events, and other performances and special events, by inputting relevant data about the event and the venue or facility in which it is to take place.

36. CollegeNET's **25LIVE®** mark is identical or nearly identical to the 25 LIVE mark and **25live.com** domain name used by Defendants.

37. Actual and prospective users of the event-booking services provided and marketed by Defendants in connection with the 25 LIVE mark and **25live.com** domain name are likely to mistakenly believe that such services are provided by, associated with, or sponsored or endorsed by CollegeNET.

38. Defendants' unauthorized use of the 25 LIVE mark, **25live.com** domain name, and variations thereof has caused and, unless restrained and enjoined by this Court, will continue to cause irreparable damage, loss and injury to CollegeNET, to an extent not yet ascertained.

COUNT I

(Infringement of Federally Registered Service Mark)

39. CollegeNET repeats and realleges each and every allegation contained in paragraphs 1 through 38, inclusive, with the same force and effect as if set forth fully herein.

40. This cause of action arises under Section 32 of the Lanham Act, 15 U.S.C. § 1114, for infringement of a federally registered mark.

41. Defendants' unauthorized use in commerce of the 25 LIVE mark, **25live.com** domain name, and variations thereof is likely to cause confusion, mistake, and/or deception as to the origin of the services provided by Defendants, and to mislead consumers into believing that such services originate from, are affiliated with, or are sponsored, authorized, approved, or sanctioned by CollegeNET.

42. Defendants' unauthorized use in commerce of the 25 LIVE mark, **25live.com** domain name, and variations thereof constitutes infringement of CollegeNET's rights in the registered **25LIVE®** mark and each **25LIVE®** Registration in violation of at least § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

43. The aforesaid acts of infringement have caused or will cause CollegeNET to sustain monetary damage, loss, and injury, to an extent not yet ascertained.

44. Defendants have engaged and continue to engage in these activities knowingly and with willful disregard for CollegeNET's rights in the registered **25LIVE®** mark, so as to justify the assessment of treble damages.

45. The aforesaid acts of infringement, unless enjoined by this Court, will continue to cause CollegeNET to sustain irreparable damage, loss, and injury, for which CollegeNET has no adequate remedy at law.

COUNT II

(Federal False Designation of Origin and Unfair Competition)

46. CollegeNET repeats and realleges each and every allegation contained in paragraphs 1 through 45, inclusive, with the same force and effect as if fully set forth herein.

47. This cause of action arises under § 43(a) of the federal Lanham Act, 15 U.S.C. § 1125(a), for false designation of origin and unfair competition.

48. As the exclusive owner and user of the **25LIVE®** mark, CollegeNET possesses valuable common law rights to said mark and the goodwill appurtenant to it.

49. Defendants' unauthorized use in commerce of the 25 LIVE mark, **25live.com** domain name, and variations thereof constitutes use in commerce of a false designation of origin that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with CollegeNET, or as to the origin, sponsorship, or approval of Defendants' services or commercial activities by CollegeNET, or of CollegeNET's goods, services, or commercial activities by one or more Defendant.

50. Defendants' use in commerce of the 25 LIVE mark, **25live.com** domain name, and variations thereof constitutes unauthorized use in commerce of terms confusingly similar to CollegeNET's **25LIVE®** mark in a manner that violates at least § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

51. Defendants' aforesaid acts of federal false designation of origin and unfair competition have caused CollegeNET to sustain monetary damage, loss, and injury, to an extent not yet ascertained.

52. Defendants have engaged and continue to engage in these activities knowingly and with willful disregard for CollegeNET's rights in the registered **25LIVE®** mark, so as to justify the assessment of treble damages.

53. Defendants' acts of federal false designation of origin and unfair competition, unless enjoined by this Court, will continue to cause CollegeNET to sustain irreparable damage, loss, and injury, for which CollegeNET has no adequate remedy at law.

COUNT III

(Common Law Service Mark Infringement and Unfair Competition)

54. CollegeNET repeats and realleges each and every allegation contained in paragraphs 1 through 53 inclusive, with the same force and effect as if fully set forth herein.

55. As the exclusive owner and user of the **25LIVE®** mark, CollegeNET possesses valuable common law rights to said mark and the goodwill appurtenant to it.

56. Defendants' use of the 25 LIVE mark, **25live.com** domain name, and variations thereof constitutes common law service mark infringement and unfair competition in violation of CollegeNET's rights in the **25LIVE®** mark.

57. Defendants' aforesaid acts of service mark infringement and unfair competition have caused CollegeNET to sustain monetary damage, loss, and injury, to an extent not yet ascertained.

58. Defendants have engaged and continue to engage in these activities knowingly and with willful disregard for CollegeNET's rights in the registered **25LIVE®** mark.

59. Defendants' acts of common law service mark infringement and unfair competition, unless enjoined by this Court, will continue to cause CollegeNET to sustain irreparable damage, loss, and injury, for which CollegeNET has no adequate remedy at law.

COUNT IV

(Secondary Liability)

60. CollegeNET repeats and realleges each and every allegation contained in paragraphs 1 through 59, inclusive, with the same force and effect as if set forth fully herein.

61. On information and belief, Defendant Word Entertainment has intentionally induced The Breen Agency and/or 25 Live to use the 25 LIVE mark, **25live.com** domain name, and variations thereof to commit acts of service mark infringement, false designation of origin, and unfair competition in violation of CollegeNET's rights in the **25LIVE®** mark.

62. On information and belief, Word Entertainment has also controlled and monitored the promotion and provision of event-booking services under the 25 LIVE mark, **25live.com** domain name, and variations thereof by The Breen Agency and/or 25 Live, in violation of CollegeNET's rights in the **25LIVE®** mark.

63. Word Entertainment has continued providing services, including promotion services and distribution of press releases, used by The Breen Agency and/or 25 Live to infringe CollegeNET's rights in the **25LIVE®** mark, despite having actual knowledge and/or reason to

know that such services were used to violate CollegeNET's rights in the **25LIVE®** mark.

64. Word Entertainment apparently and/or actually exercises joint ownership or control with 25 Live and/or The Breen Agency over the promotion and provision of event-booking services in connection with the 25 LIVE mark, **25live.com** domain name, and variations thereof, in violation of CollegeNET's rights in the **25LIVE®** mark.

65. Word Entertainment is contributorily and vicariously liable for the federal service mark infringement, federal false designation of origin and unfair competition, and common law service mark infringement and unfair competition undertaken by 25 Live and/or The Breen Agency, in violation of CollegeNET's rights in the **25LIVE®** mark.

66. Word Entertainment's aforesaid acts have caused Plaintiff to sustain monetary damage, loss, and injury, to an extent not yet ascertained.

67. Word Entertainment has engaged and continues to engage in these activities knowingly and with willful disregard for CollegeNET's rights in the registered **25LIVE®** mark.

68. Word Entertainment's acts, unless enjoined by this Court, will continue to cause CollegeNET to sustain irreparable damage, loss and injury, for which CollegeNET has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, CollegeNET respectfully prays for the following relief:

1. For a judgment and declaration as follows:
 - a. That the **25LIVE®** mark and Registrations are valid and enforceable;
 - b. That CollegeNET is the exclusive owner of all right, title, and interest in and to the **25LIVE®** mark and Registrations;
 - c. That Defendants' use of the 25 LIVE mark, **25live.com** domain name, and variations thereof in connection with event-booking services are likely to cause confusion, mistake, or deception as to the origin of such services, and to mislead customers in Oregon

and the United States into believing that such goods originate from, are affiliated with, or are sponsored, authorized, approved, or sanctioned by CollegeNET;

- d. That each Defendant is liable on each of the following causes of action:
 - i. Infringement of a federally registered service mark in violation of 15 U.S.C. § 1114(1);
 - ii. Federal false designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a);
 - iii. Common law service mark infringement and unfair competition.
- e. That Word Entertainment is contributorily and vicariously liable for the acts of The Breen Agency and 25 Live on each of the following causes of action:
 - i. Infringement of a federally registered service mark in violation of 15 U.S.C. § 1114(1);
 - ii. Federal false designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a);
 - iii. Common law service mark infringement and unfair competition.
- f. That each Defendant has engaged in the following acts knowingly and with willful disregard for CollegeNET's rights in the **25LIVE®** mark:
 - i. Infringement of a federally registered service mark in violation of 15 U.S.C. § 1114(1);
 - ii. Federal false designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a);

- iii. Common law service mark infringement and unfair competition.
- g. That Word Entertainment has engaged in the following acts knowingly and with willful disregard for CollegeNET's rights in the **25LIVE®** mark:
 - i. Contributory and vicarious infringement of a federally registered service mark in violation of 15 U.S.C. § 1114(1);
 - ii. Contributory and vicarious federal false designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a);
 - iii. Contributory and vicarious common law service mark infringement and unfair competition.
- 2. That Defendants, their officers, agents, servants, employees, attorneys, and all other persons acting in concert or participation with any Defendant be preliminarily and permanently enjoined:
 - a. From directly or indirectly using, preparing, producing, manufacturing, ordering, printing, publishing, rendering, distributing, selling, offering for sale, advertising, promoting, or otherwise exploiting any goods or services in Oregon, the United States, or in commerce under the 25 LIVE mark, the **25live.com** domain name, or any other designation similar to the **25LIVE®** mark;
 - b. From otherwise continuing to infringe upon the **25LIVE®** mark;
 - c. From further using in connection with any goods or services in Oregon, the United States, or in commerce, any false or deceptive designation or description, whether by words or other symbols or representations, which suggest or imply any relationship between any Defendant and CollegeNET or between CollegeNET and any

- Defendant's goods and services;
- d. From further engaging in any acts of unfair competition against CollegeNET;
 - e. From any attempts to register the 25 LIVE mark, whether as a service mark, trade name, business name, domain name, or otherwise, or any variation thereof similar to the **25LIVE®** mark;
 - f. From in any way inducing, encouraging, aiding, abetting, or contributing to any of the aforesaid acts; and
 - g. To immediately transfer control of the **25live.com** domain name to CollegeNET;
3. That each Defendant be required to immediately account to CollegeNET for all gains, profits, and advantages derived from its unlawful acts;
 4. That CollegeNET be awarded all damages caused by each Defendant's unlawful acts that form the basis of this Complaint;
 5. That CollegeNET be awarded monetary relief arising out of each Defendant's unlawful acts, as provided above, in an amount to be determined at trial;
 6. That due to the willful nature of each Defendant's infringement and other unlawful acts provided above, and pursuant to 15 U.S.C. § 1117, the Court enter judgment for CollegeNET for three times the amount of said damages;
 7. That in view of the knowing, willful, wanton and deliberate nature of each Defendant's unlawful acts, CollegeNET be awarded a judgment that this case is an "exceptional case" under 15 U.S.C. § 1117 and that Defendants pay CollegeNET's costs and disbursements in this action together with reasonable attorneys' fees;
 8. For punitive damages to the extent permitted by law; and

9. That CollegeNET have such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38 and LR 38(1), Plaintiff CollegeNET demands a jury trial on all issues triable to a jury.

Dated this 25th day of May, 2011.

CHRISTENSEN O'CONNOR
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